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**Entrepreneurial Environmentalism:
A New Approach for the New Millennium**

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ESSAYS

ENTREPRENEURIAL ENVIRONMENTALISM: A NEW APPROACH FOR THE NEW MILLENNIUM

BY
CONGRESSMAN EARL BLUMENAUER*

In this Essay, Representative Blumenauer discusses the history of the United States's environmental movement and the laws it has produced. Given the current stalemate, where political pressure and shrinking economic resources prevent further environmental progress, he argues that the traditional environmental regulation model must be reevaluated. Representative Blumenauer suggests that an entrepreneurial approach to environmentalism is necessary to make our communities more livable in the years to come. An entrepreneurial model would craft comprehensive solutions to environmental problems, emphasize "cheap and green" solutions, focus on environmental results rather than regulations, and employ economic incentives to improve performance. According to Representative Blumenauer, the federal government should lead by example by requiring its own agencies to follow environmentally responsible policies.

I. INTRODUCTION

"Our property seems to me the most beautiful in the world. It is so close to Babylon that we enjoy all the advantages of the city, and yet when we come home we are away from all the noise and dust."¹

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¹ KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 12 (1985) (quoting 539 B.C. letter to the King of Persia, written in cuneiform on a clay tablet).

This excerpt from an ancient letter to the King of Persia may be civilization's first articulation of our degradation of the environment. In the two millennia and more that have passed since then, we have sadly lost none of our ability to damage and degrade. In fact, the pace of degradation has accelerated, the nature of the threats have changed, and the issues and politics that surround them appear to be more complex than ever.

What has changed for the better is our growing awareness of the consequences of our behaviors and our understanding of the urgency of environmental problems. Now, at the end of the millennium, is a good time to take stock—to consider both where our environmental policy has been, and where it should go.

The purpose of this Essay is to comment on the nature, pace, and direction of our environmental policy and to propose a new approach to environmental regulation, one that is more respectful of the complexities of environmental issues and responsive to the needs of today's polity. With this new approach, the federal government has the opportunity to harness change and protect the environment more effectively in the next century.

II. THE ENVIRONMENT TAKES CENTER STAGE

The modern environmental movement in the United States accelerated with the publication of Rachel Carson's *Silent Spring* in 1962.² Her powerful and insightful description of the toll pollution was taking on the natural environment spurred an entire generation to greater awareness and, more importantly, to greater public involvement.

It was perhaps inevitable that the activism of the civil rights and antiwar movements would spill over into concern about the environment. That concern came into sharp focus on January 28, 1969, with the catastrophic oil spill off Santa Barbara, California.³ It was not just the thought of tens of thousands of gallons of crude oil gushing into the pristine Pacific Ocean that galvanized the public. Nor was it the economic damage to the coastal economy or the deaths of thousands of waterfowl. It was the sheer visual impact of this devastating event. An eight hundred square-mile oil slick coated thirty miles of some of the nation's most beautiful beaches, and it all played out in a made-for-television spectacular just minutes from the media and entertainment capital of the United States.⁴ Suddenly, environmental devastation became an undeniable reality. This catastrophe provided irrefutable, tangible evidence that our daily practices were placing our environment at great risk.

Many feel that the media coverage of the Santa Barbara oil spill was the catalyst for the first Earth Day.⁵ Dedicated environmentalists—including Barry Commoner, Jacques Cousteau, and other luminaries—brought these

² See RACHEL CARSON, *SILENT SPRING* (1962).

³ Martin Miller, *Stories That Shaped the Century: The Oil Spill that Sparked the Green Revolution*, L.A. TIMES, Nov. 30, 1999, at B4.

⁴ *Id.*

⁵ *Id.*

concerns to the national consciousness.⁶ The April 22, 1970 Earth Day celebration helped alter the public consciousness and political climate forever and prompted President Richard Nixon to proclaim in his 1971 State of the Union address that restoring and enhancing the natural environment was one of the "great goals" for his administration.⁷

III. FEDERAL AND STATE GOVERNMENTS RESPOND

The first major national environmental measures, the 1948 Water Pollution Control Act⁸ and the 1955 Air Pollution Control Act,⁹ identified a federal role in what had previously been the exclusive responsibility of state and local governments. It was during the Nixon Administration, however, that federal environmental regulation exploded. Propelled by public events, Democrats in Congress joined forces with the Republican Administration to produce legislation that still serves as the backbone for the current environmental protection structure of the United States. The National Environmental Policy Act,¹⁰ which created the Council on Environmental Quality,¹¹ the Clean Air Act Amendments of 1970,¹² and the Endangered Species Act¹³ are all part of the environmental legacy of the Nixon era.

State governments, too, embraced the environment. Oregon in particular has been acknowledged as a leader in adopting environmental regulations that in many cases surpass federal standards. Oregon's comprehensive land use planning process was designed to harmonize government decisions regarding land and the environment.¹⁴ The first in the nation, Oregon's Land Use Planning Program remains the most comprehensive and sophisticated approach in any of the fifty states.

Oregon also pioneered legislation that had both symbolic and practical effect, such as the Bottle Bill,¹⁵ which requires a deposit on bottles, and the Bicycle Bill,¹⁶ which sets aside one percent of the state highway fund for construction of bike paths. The State of Oregon also established a state transportation commission and required a comprehensive, multimodal

⁶ See BENJAMIN KLINE, *FIRST ALONG THE RIVER: A BRIEF HISTORY OF THE U.S. ENVIRONMENTAL MOVEMENT* 82 (1997) (discussing Barry Commoner's role in establishing the environmental movement).

⁷ President Richard Nixon, State of the Union Address (Jan. 20, 1971), *microformed on* CIS No. 70-H920-1, 3 (Congressional Info. Serv.).

⁸ Pub. L. No. 80-845, 62 Stat. 1155 (current version at 33 U.S.C. §§ 1251-1387 (1994 & Supp. III 1997)).

⁹ Pub. L. No. 84-159, 69 Stat. 322 (current version at 42 U.S.C. §§ 7401-7671q (1994 & Supp. III 1997)).

¹⁰ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370d (1994 & Supp. III 1997).

¹¹ *Id.* § 4342 (1994).

¹² Pub. L. No. 91-604, 84 Stat. 1676 (codified as amended at 42 U.S.C. §§ 7401-7671q (1994 & Supp. III 1997)).

¹³ Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (1994).

¹⁴ See Act of March 23, 1973, ch. 80, pt. 1, 1973 Or. Laws 127.

¹⁵ Act of July 2, 1971, ch. 745, 1971 Or. Laws 2015.

¹⁶ Act of June 11, 1971, ch. 376, 1971 Or. Laws 541.

transportation plan¹⁷ two decades before the federal government passed the Intermodal Surface Transportation Efficiency Act (ISTEA)¹⁸ in 1991.

IV. PUBLIC CONCERN CONTINUES

While Oregon is justifiably proud of its environmental legacy, other states have enacted their own versions of land use planning and protection. Vermont and Florida were among the early pioneers.¹⁹ More recently, we have seen new efforts in Maryland and Georgia, and even in states some would have thought unlikely, such as Tennessee and Arizona.²⁰ At the local level, the last two election cycles have seen a burst of environmental activism, with open space acquisition, transportation improvements, and growth boundaries being proposed in 240 state and local initiatives, of which 170—over 70%—passed.²¹

The activism of the last twenty-five years on the federal, state, and local levels has been driven by the increased environmental awareness and activism on the part of American citizens. Survey research shows that environmental concerns consistently rank high with a broad cross section of the public. Even some of the most conservative, and Republican constituencies support park and open space acquisition, environmental protection, and cleanup of polluted sites.²² More than that, American voters are actually willing to pay for these things: the majority of the initiatives mentioned above involved the expenditure of money.

V. THE HARD REALITIES

A. Political Stalemate

Despite the progress over the last half century, troubling signs have emerged. For most of the last decade, environmental protection at the federal level has reached an impasse, as increasing concerns about the economic and social impacts of environmental regulation have led to the extension of important targets and deadlines as well as growing resistance to new protective legislation. When the federal government does act,

¹⁷ Act of July 10, 1973, ch. 249, 1973 Or. Laws 415.

¹⁸ Pub. L. No. 102-240, 105 Stat. 1914 (1991) (codified in scattered sections of 23 U.S.C., 49 U.S.C., and other titles of U.S.C.).

¹⁹ See FLA. STAT. ch. 380.11 (1997); VT. STAT. ANN. tit. 10 (1998).

²⁰ See ARIZ. REV. STAT. § 49-104 (1997); GA. CODE ANN. tit. 12 (1997); MD. CODE ANN., ENVIRONMENT § 1-101 (1998); TENN. CODE ANN. tit. 11, ch. 14 (1998).

²¹ See generally PHYLLIS MYERS, BROOKINGS INST. CENTER ON URBAN AND METROPOLITAN POLICY, LIVABILITY AT THE BALLOT BOX: STATE AND LOCAL REFERENDA ON PARKS, CONSERVATION, AND SMARTER GROWTH, ELECTION DAY 1998 (1999) (describing survey results).

²² ZOGBY INTERNATIONAL, ENVIRONMENTAL POLL: A POLL OF LIKELY REPUBLICAN PRIMARY OR CAUCUS VOTERS IN CALIFORNIA, IOWA, NEW HAMPSHIRE, NEW YORK, AND SOUTH CAROLINA 24 (1999) (submitted to National Environmental Trust, 1200 Eighteenth Street, N.W., Washington D.C. 20036).

initiatives providing long-term environmental protection are often sidetracked by issues that are shorter-term, more tangible, and easier to accomplish. Comprehensive environmental approaches are too often laid aside as overly complex or even impossible to implement.

Some of the responsibility for this impasse can be laid at the door of our democratic system. The separation of powers defined by the United States Constitution is designed to produce an inefficient government. With all three branches of the federal government—legislative, executive, and judicial—deeply involved with environmental issues, there are any number of ways to derail initiatives. In such a system, some argue, it would be wiser to scale back our aspirations and deal with these complex issues in an easier, piecemeal fashion.

Add to this mix the rise of conservative elements in Congress who are eager to block any new governmental regulation, environmental or otherwise. Consider too the way that "splitting the difference"—reaching compromises, trading partial victories and defeat—can form a pattern that may make political sense, but does little to address complex environmental problems. In addition, the needs of interest organizations to build constituencies and generate financial support often favor strident advocacy and extreme action, rather than nuanced, comprehensive environmental solutions. Finally, the public's short attention span and the media's propensity to focus on controversy and quick fixes actively discourage thoughtful discussions and articulate, complete explanations.

In the earlier days of the environmental movement, when the problems were broader in nature, solutions less onerous, and fewer people had the means and the motivation to derail government actions and regulations, a more confrontational approach made sense to many. James Watt, Ronald Reagan's Secretary of the Interior, served as a lightning rod for the environmental movement and demonstrated the value of having a high-profile enemy for fundraising and political recruiting.²³

Today, however, it seems that those who portray environmental issues in stark black-and-white terms are often the only voices to be heard. The results are not good. The harder these discussions become, the deeper and more firmly the players dig into their positions, refusing to listen, compromise, learn, or move beyond preconceived notions. Under these conditions, it is extremely difficult to create and nurture the broad alliances that can lead to more thoughtful, comprehensive discussions or legislation.

B. Shrinking Revenues and Resources

Even as the debate on environmental protections grows more shrill and less useful, our efforts to maintain and enhance environmental protections are further complicated by struggles over government resources. It is an expensive proposition to clean up toxic wastes, military depots, nuclear waste sites, the Hanford Nuclear Reservation, and Rocky Flats. Across the

²³ PHILIP SHABECOFF, *A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT* 207–10 (1993).

nation, we have 950 municipal sewer systems with combined sewer overflows (CSOs)²⁴; fixing them will cost local governments billions of dollars.²⁵ Whether it is the need to restore salmon populations, create a balanced transportation system, find alternative sources of energy, develop strategies to reduce greenhouse gas emissions, or clean up Superfund waste sites, the bill for environmental restoration across America is coming due—and it is enormous.

In the short run, the resources to remedy these situations are constrained by the Budget Enforcement Act of 1997,²⁶ which committed the Federal Government to dramatic reductions in expenditures at precisely the time that the revenue base of many state and local communities is being threatened by structural changes. As more and more Americans' income and wealth are reflected in stock options, IRAs, and 401(k) plans, the base shrinks for the income tax, which is the mainstay for financing the federal and many state governments. Similarly, the exponential growth in intangible wealth means property taxes reflect less of an individual's wealth, as well as his or her ability to support public causes. The sales tax, the third leg of the financing stool for all but a handful of states, is being threatened by the recent explosion of untaxed Internet commerce.

In an era of deregulation, utility franchise fees and utility taxes will inevitably shrink, as will receipts from the gas tax—the primary revenue source for transportation needs—as transportation patterns shift to more energy-efficient alternative fuels and electric vehicles. Unfortunately, demands against the transportation system itself (in terms of capacity, congestion, and secondary impacts like storm water runoff) will continue unabated, requiring government action and expenditures. Sadly, even dedicated revenue sources for cleaning up the worst environmental risks are not inviolate. The federal tax that funded the clean up of Superfund sites expired in 1995,²⁷ and prospects for reinstating this tax any time in the near future are not bright.

VI. ENTREPRENEURIAL ENVIRONMENTALISM

All of these challenges make environmentalism in the new millennium more complex and more problematic. In the face of growing environmental needs, increasing public support for environmental protections, and the continued inability of the federal government to act, we need a third way, a new approach to environmental protection.

I believe a serious, thoughtful approach to environmental regulation has four components:

²⁴ U.S. ENVTL. PROTECTION AGENCY, COMBINED SEWER OVERFLOWS: WHERE ARE WE FOUR YEARS AFTER THE ADOPTION OF THE GSO CONTROL POLICY? 1 (1998).

²⁵ *Id.* at 3–4.

²⁶ Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 1001–10213, 111 Stat. 251, 677 (codified as amended in scattered sections of 2 U.S.C.).

²⁷ See Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9611 (1994 & Supp. III 1997).

- An effort to craft comprehensive solutions, instead of piecemeal approaches;
- A preference for low-tech, "cheap and green" solutions;
- A focus on performance and results rather than regulations and requirements; and
- An emphasis on economic incentives and entrepreneurial attitudes.

A. Comprehensive Solutions

In the past, our focus on specific elements of pollution—air, water, and toxic waste—has resulted in a targeted and highly fragmented approach. We know how to deal effectively with pollution from specific points like smokestacks and effluent pipes, but we are much less effective in addressing the nonpoint sources of air and water pollution that are primarily responsible for today's environmental problems.

We are also learning that the environmental problems are deeply interrelated and cry out for integrated solutions. For example, metropolitan Atlanta's traffic problems are largely responsible for its notorious air pollution.²⁸ Efforts to ease congestion through more road building would only increase air pollution from more traffic, as well as threaten the region's water quality and storm runoff management, as wetlands and open space, which retain and purify water, are sacrificed to more pavement.

Modern environmental problems such as air and water pollution, vulnerability to storms, flooding, and traffic congestion are not only interrelated—they also do not observe political boundaries. Viewing metropolitan New York from a satellite, one cannot distinguish the three boundaries of New York, New Jersey, and Connecticut. The regional consequences of the air, water, and traffic sheds that transcend these artificial boundaries, however, are clearly visible and affect all residents of the area, regardless of their zip code.

There is an alternative to isolated fixes—a comprehensive approach that honors natural boundaries and consequences rather than political ones. Instead of forcing the City of Portland, Oregon, for example, to spend hundreds of millions of dollars to clean up a river already suffering from upstream pollution, a comprehensive approach would actively encourage the city to invest part of its cleanup dollars upstream, to work in partnership with state agencies and citizens to address nonpoint pollution from agricultural waste, fertilizer, and pesticides. Such an approach would not only buy a dramatic improvement in water quality over a longer reach of the Willamette River, but would also foster greater city/state working relationships and could educate, activate, and empower citizens through their participation.

²⁸ *Urban Sprawl: To Traffic Hell and Back*, THE ECONOMIST, May 8, 1999, at 23.

B. Cheap and Green

Cheap, green, low-tech solutions can stretch and multiply the impact of environmental programs and expenditures. Since the goal of the New Environmentalism is to create comprehensive solutions instead of piecemeal approaches, government can, in effect, reap multiple benefits from each dollar spent. This not only increases results, but also demonstrates shrewd financial management to the general public.

Consider, for example, community-based efforts to plant more street trees. This nationwide movement, often held on Arbor Day, actively engages people in improving their neighborhoods. For some, it is simply a matter of beautification; street trees add an aesthetic, pleasing effect that increases over time. For others, trees enhance property values.²⁹ Evidence is very strong that mature, well-maintained street trees boost property values thousands of dollars, benefiting the homeowner and often the municipality through increased property tax collections.³⁰

Trees also provide a number of other benefits as well. Trees provide additional value through their canopies and deep root structures.³¹ These natural filtration systems not only improve water quality, but are an effective way to reduce storm water runoff in those 1100 communities that have combined sewer overflow problems.³² A green corridor of trees helps save energy. Houses cooled by shade trees do not have to rely as much on electric fans or air conditioners to maintain comfortable summer temperatures. Trees benefit wildlife, not only by increasing urban habitat for songbirds and small mammals, but by cooling critical waterways for salmon. While we can regulate the temperature of water discharged from specific point sources, shade trees are the best way to cool nonpoint source runoff during hot summer months, while providing storage of water during rainy periods, thus helping the CSO problem. The City of Portland also uses the leaves of street trees as part of a natural filtration process for the passive treatment of storm water.³³ Finally, changing the line of sight of neighborhood streets with street trees can actually change driving behavior, encouraging motorists to drive more slowly and responsibly.

Thus, what started out as a simple beautification program by people who like trees has enhanced property values, purified the air and water, reduced storm runoff, made neighborhood streets safer, saved energy, and enhanced not only human, but also wildlife, habitat.

²⁹ Samara F. Swanston, *Environmental Justice and Environmental Quality Benefits: The Oldest, Most Pernicious Struggle and Hope for Burdened Communities*, 23 VT. L. REV. 545, 548 (1999).

³⁰ See Donald C. Shoup, *Regulating Land Use at Sale: Public Improvement From Private Investment*, 62 J. AM. PLANNING ASS'N 354 (1996).

³¹ See GARY O. ROBINETTE, *PLANTS/PEOPLE/AND ENVIRONMENTAL QUALITY* 36 (1972).

³² *Id.*

³³ JAMES LENHART, *THE STORMWATER MANAGEMENT STORMFILTER* 252 (National Conference on Retrofit Opportunities for Water Resource Protection in Urban Environments, U.S. EPA/625/R-99/002, 1999).

The challenge of reducing combined sewer overflow is another area where we can reap multiple benefits from specific expenditures.³⁴ Many communities have spent huge sums of money to dig deep tanks and tunnels to capture and retain storm water or to expand storm and sanitary sewers.³⁵ But we can often achieve many of the same results with far less money, while providing other environmental benefits in the bargain. We can restore urban wetlands to provide wildlife habitat, vegetation, and natural flood storage areas. We can daylight previously submerged creeks to dramatically increase their carrying capacity while creating valuable waterfront property for private landowners and public parks. For example, in Portland and other communities, we have planted wildflowers along road rights-of-way to eliminate expensive mowing, reduce soil erosion, and please the eye. We have built narrower, cheaper, "skinny streets" that produce less runoff and create safer neighborhoods by discouraging speeding traffic.

C. Performance-Based Environmentalism

When the federal government initially established levels of environmental protection, it placed strong emphasis on setting regulatory standards and obtaining compliance from individuals, government, and business through enforcement.³⁶ This was entirely appropriate for the time, given the serious nature of some problems and the need to obtain widespread compliance.

Today, however, it is increasingly apparent that we need to be more flexible as we engage new partners and aim for greater progress in environmental protection. Factors such as uncertainty about regulations, problems with compliance and implementation of technology, and questions about whether companies will get full credit for their environmental initiatives can have the perverse effect of delaying program implementation, discouraging innovation, and eroding trust between parties.

In some cases, rigid adherence to an old standard, however appropriate at the time of its enactment, has the opposite of the intended effect. One example is the City of Portland's parking lid. Adopted in 1975, the parking lid was an innovative approach to control air quality problems in the downtown area and encourage the use of alternative forms of transportation.³⁷ For twenty years it helped guide downtown development, improving the city's air quality while restricting the growth of automobile travel into the city.

³⁴ See Richard Field, *Storm and Combined Sewer Overflow: An Overview of EPA's Research Program* (visited Oct. 11, 1999) <<http://www.epa.gov/ednnrmrl/repository/epa88905.htm>>.

³⁵ See *Nationwide Evaluation of Combined Sewer Overflows and Urban Stormwater Discharges Volume II: Cost Assessment and Impact* (visited Oct. 11, 1999) <<http://www.epa.gov/ednnrmrl/repository/epa88905.htm>>.

³⁶ See Reorg. Plan No. 3 of 1970, 42 U.S.C. § 4321 (1994); ENVIRONMENTAL LAW INSTITUTE, *SUSTAINABLE ENVIRONMENTAL LAW: INTEGRATING NATURAL RESOURCES AND POLLUTION ABATEMENT LAW* §§ 1.2(I), 4.2(A) (1993).

³⁷ See Henry R. Richmond, *From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma*, 13 PACE L. REV. 327, 344-45 (1993).

Ultimately, the parking lid became obsolete. As the central city outgrew the traditional downtown, the restriction on downtown parking began to make development in the outlying areas more attractive. Fortunately, the response to this problem focused on the ends, not the means. The City of Portland eliminated the absolute lid, but replaced it with strict parking ratios that expanded the limit to a wider area.³⁸ While the parking ratios lacked the emotional impact of the symbolic "lid," they also encouraged continued downtown development while controlling congestion, auto use, and air pollution.

Another "results-based" example from the Portland metropolitan region was the expansion of Intel's manufacturing operations in the mid-1990s. Most states require individual permits for all tools and machinery within a plant; simply moving a tool from one end of the building to another often requires sixty to ninety days for notification and permits.³⁹ This time frame is simply too long for high-tech companies, which need the flexibility to move machinery and reconfigure plants quickly, often within hours. Thus Intel was understandably reluctant to proceed with a new billion-dollar-plus investment without assurance that it could reconfigure its machinery on short notice. Instead of insisting on an arduous, time-consuming process to impose costly regulations, the federal and state governments worked with Intel to devise a solution that focused on the company's ability to meet clean air requirements. They set a limit on pollutants that could be emitted from each plant, then allowed Intel engineers to determine the best ways to meet those goals. It worked. Intel received the flexibility to maintain a competitive business edge, Intel and the state and federal agencies cut administrative costs, and most importantly, the general public reaped the benefits of cleaner air.⁴⁰

Today, it is important that we empower and reward environmentally sensitive enterprises and businesspeople who are willing to be held accountable for meeting or exceeding environmental standards. Their innovative approaches contribute to our solutions and free up scarce resources to regulate the less-responsible members of our society, who need closer watching. Simply put, we need to keep our focus on what we want to achieve and give a freer hand to those who are willing to be responsible players.

D. Entrepreneurial Solutions and Economic Incentives

Finally, a new approach to environmental regulation will require government to operate differently across the board, from innovative thinking to forging new working relationships. Setting aside the old emphasis on

³⁸ Janet Christ, *Lifting the Lid*, THE OREGONIAN, Aug. 11, 1995, at B1; see PORTLAND, OR., CODE ch. 33.510.261 (1997).

³⁹ See Comments by Intel Corp. on the Draft Final Part 70 Regulations [A-93-50], to U.S. Envtl. Protection Agency 20, 22 (May 26, 1998) (on file with author).

⁴⁰ See generally INTEL, COMMITMENT AROUND THE GLOBE, DESIGNING A FUTURE (1999) (discussing Intel's environmental policy) (available at Intel's website, <<http://www.intel.com>>).

regulations means learning to work more collaboratively and to involve new partners—businesses, academic institutions, and community groups, to name a few—in the process. Focusing on performance and results rather than standards and regulations means de-emphasizing enforcement in favor of incentives, particularly economic ones. Using this approach, we can help achieve better-than-expected results and create unexpected new solutions.

Economic incentives are certainly not new. Unfortunately, the federal government often offers economic incentives for many activities that are simply environmentally undesirable. Until recently, for example, the federal government's tax on capital gains realized from the sale of residential property encouraged people to move into larger, more expensive houses and discouraged people from moving into smaller, less expensive accommodations.⁴¹ As long as people remained in place, or invested in a larger, more expensive home, they did not suffer that tax liability. The Tax Payer Relief Act of 1997⁴² eliminated capital gains for the vast majority of American homeowners, allowing them to make housing choices based on their individual needs, rather than the tax code.⁴³ Although it is too early to have a great deal of empirical evidence, anecdotal evidence suggests that people are already taking advantage of this opportunity to downsize by moving back to central cities, strengthening existing neighborhoods, and reducing the pressure for continued sprawl.

Another example of wrong economic signals was the federal tax system's treatment of commuters. Until recently, employers could give generous, tax-free parking to commuters who drove, generally at no cost to the employees. Commuters who used transit, however, were required to pay income tax on their transit benefit.⁴⁴ Thus, the tax code encouraged single-occupant commuting and discouraged the use of mass transit.

The Transportation Equity Act for the 21st Century⁴⁵ ensures that transit benefits and parking benefits receive the same tax-free treatment.⁴⁶ A tax policy that treats transit use and driving equally allows commuters to make the best transportation choice for themselves, their families, and their economic situations, rather than driving simply because it appears free and easy. Establishing equity among choices encourages people to make choices that are at least neutral, and in many cases, beneficial for the environment.

As we pursue entrepreneurial environmentalism, one of the most important changes we can make is to ensure that economic incentives produce the right behaviors. Government needs to present a consistent set of pricing signals at all levels. For example, why should hundreds of municipal water agencies across the country still provide discounts for high-volume consumption, when we are trying to conserve water resources?

⁴¹ H.R. REP. NO. 105-148, at 347-48 (1997), *reprinted in* 1997 U.S.C.A.N. 678, 741-42 (listing numerous reasons for changing the law).

⁴² Pub. L. No. 105-34, 11 Stat. 830 (codified as amended at 20 U.S.C. § 121 (Supp. IV 1998)).

⁴³ 20 U.S.C. § 121 (Supp. IV 1998); *see also* H.R. REP. NO. 105-148, at 347-48.

⁴⁴ 26 U.S.C. § 132(f) (1994), *amended by* Pub. L. No. 105-178, 112 Stat. 507-08 (codified at 26 U.S.C. § 132(f) (West Supp. IV 1998)).

⁴⁵ Pub. L. No. 105-178, 112 Stat. at 507-08.

⁴⁶ *Id.* § 9010.

Sewer and water rates that are based on the actual amount of water used—or that provide even modest economic disincentives through increased per-unit cost—could have a profound effect on water consumption, adjusting the behavior of millions of water users across the country.

The federal government's current funding formulas also send signals that skew important decision-making processes. For example, the federal government provides a higher dollar match to jurisdictions for roads (eighty percent of project costs) than for transit systems (usually fifty percent of project costs, and harder to obtain).⁴⁷ The federal government also contributes more funds to pave over creeks than to use nonstructural approaches that may be more effective and environmentally friendly. These pricing signals drive local jurisdictions to make decisions based on the amount of federal dollars they can get, instead of the environmental benefits they could otherwise achieve.

The federal flood insurance system contains another seriously flawed price signal. The National Flood Insurance Program currently provides subsidized flood insurance for hundreds of thousands of people living in flood-prone areas, rather than charging actuarial rates.⁴⁸ As a result of this arrangement, the National Flood Insurance Program has a current deficit of about three-quarters of a billion dollars—money that could be used for effective environmental protection, instead of to enable people to live and work in environmentally sensitive, flood-prone areas.⁴⁹ Currently, forty percent of National Flood Insurance payments go to only two percent of insured properties.⁵⁰ Some have been flooded out repeatedly; many are located in areas that are subject to storms, hurricanes, and coastal erosion. If the federal government provided equitable relief where it was warranted, and if people in disaster-prone areas were given money to relocate rather than to continually repair and rebuild, these economic incentives could help create a more sustainable pattern of development.

Across the country, new partnerships are springing up that demonstrate how more entrepreneurial thinking can turn problems into solutions. In Portland, a significant portion of the new light rail line to the airport was funded by offering development rights along the line to the contractor.⁵¹ We need new partnerships as well as new incentives to engage more people and to create more innovative solutions to long-standing and complex environmental problems. Encouraging the behaviors that society wants and discouraging those that are counterproductive is one of the most powerful, effective, and efficient ways to achieve environmentally desired objectives.

⁴⁷ See Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, § 1012, 105 Stat. 1937; H.R. REP. NO. 102-171(I), at 23 (1991), reprinted in 1991 U.S.C.C.A.N. 1526, 1549; see also 49 U.S.C. § 5307(d), (e) (1994 & Supp. III 1997).

⁴⁸ See 42 U.S.C. §§ 4001(d), 4002(b)(1), 4014, 4015(b)(2) (1994).

⁴⁹ 145 CONG. REC. H8389-01 (Sept. 21, 1999) (statement of Rep. Blumenauer).

⁵⁰ *Id.*

⁵¹ Gordon Oliver, *Tri-Met Puts Price Tag on Airport Line*, THE OREGONIAN, July 17, 1997, at C1.

VII. THE ROLE OF THE FEDERAL GOVERNMENT: LEAD BY EXAMPLE

These are the tenets of entrepreneurial environmentalism. The next question is how they may best be put into practice. How, especially, can the federal government begin to reevaluate and reform its approach to environmental issues? This is not a question of new rules, regulations, and fees. The single most important step is for government—and particularly, the federal government—to lead by example.

As the nation's largest landowner, landlord, and employer, the federal government has a pervasive impact around the country and could be a powerful model for the behavior that we seek from individuals, businesses, and institutions. Unfortunately, today, the federal government too often leads us in the wrong direction. The United States Postal Service, for example, is not currently required to obey local land-use laws, zoning codes, zoning and planning requirements, or environmental regulations. Lately, however, there has been great interest in legislation that would require the United States Postal Service to do so.⁵² This may be the only environmental bill to date supported by both the Sierra Club and the National Association of Homebuilders. This resolution would further mandate that the Postal Service work with local communities in a more collaborative fashion.

This legislation is symbolic as well as significant. The Post Office operates in over forty thousand American communities and touches virtually every family in our country six times a week. A policy change to require the Postal Service to play by rules that everyone else is required to follow can make a significant difference in towns large and small.

This approach has also prompted a closer look at the General Service Administration (GSA), the steward for federal buildings.⁵³ Currently, GSA owns or leases a million square feet or more in sixty communities; nationwide, the total inventory is over 280 million square feet.⁵⁴ The location of this federal property, its parking and transportation options, and its relationship to established transportation and commercial centers, has a tremendous impact on issues of urban form, land use patterns, and transportation choices in those communities.

Currently, supportive leadership in the GSA is developing innovative new programs to address these issues.⁵⁵ But the GSA represents other federal agencies, which are under no requirement to adhere to GSA's policies. If the United States Immigration Service or the FBI wants to be in a strip mall at the edge of town, so be it. GSA has no authority to require them to change, and the federal government continues to spread its resources around the country, regardless of the plans, needs, or environmental concerns of local communities. Reorienting GSA and the agencies it serves

⁵² Post Office Community Partnership Act of 1999, H.R. 670, 106th Cong. (1999).

⁵³ See *Gore Announces Nearly 50 Federal Commitments to Build a More Sustainable America*, U.S. Newswire, May 4, 1999, available in 1999 WL 4638735.

⁵⁴ General Services Administration, *Public Buildings Service* (visited Dec. 5, 1999) <<http://www.gsa.gov/pbsintro.htm>>.

⁵⁵ General Services Administration, *Center for Urban Development* (visited Jan. 27, 1999) <<http://web2.xservices.com/goodnb>>.

to improve land use and environmental considerations would have a major impact on communities—and their environmental health—nationwide.

There is no end to the opportunities for the federal government to model sound environmental protection, whether it is dealing with military bases—many of which may contain Superfund sites and other hazardous materials—that are being recycled into broader community uses, the decommissioning of naval ships in an environmentally sound and sensible way, or managing public lands, grazing, timber, water, and mining. All are opportunities where, with a little money and effort, the federal government can promote and advance the values and environmental results that are so important to Americans.

VIII. CONCLUSION

The elements for entrepreneurial environmentalism are all in place. Public support for environmental initiatives continues to be high, and public awareness of the number and complexity of environmental problems is growing. At the same time, much of the public is distrustful of “big government” and eager for smaller, more manageable efforts that make a difference at the local level.

Entrepreneurial environmentalism recognizes those shifts in public attitude, even as it understands the changing and intertwining role of government and business with citizens seeking solutions. It allows us to marshal our diminishing resources more efficiently and make the best use of our partners’ contributions and innovations. Above all, it allows us to focus on the results we want: making our families safer, healthier and more economically secure. In other words, it helps us make our communities more livable.



